

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0419

**Gross Income Tax
For Tax Periods 1994-1995**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Gross Income Tax—Interstate Transportation

Authority: IC 6-8.1-3-3; 45 IAC 1-1-121; 45 IAC 1-1-145

Taxpayer protests imposition of Gross Income Tax on sorting and handling services.

STATEMENT OF FACTS

Taxpayer maintains handling and sorting contracts with interstate carriers. Taxpayer handles packages as they move through an airport located in Indiana. The packages are unloaded from airplanes and trucks, sorted and then reloaded onto other airplanes and trucks. The Department of Revenue ("Department") conducted an audit of the taxpayer covering the years of 1994 and 1995. A result of this audit was an adjustment to taxpayer's Indiana gross income. Additional proposed assessments of Gross Income Tax were made on taxpayer's income from these handling and sorting contracts. Taxpayer, however, believes this income is exempt from Gross Income Tax as the income represents receipts earned from interstate commerce.

I. Gross Income Tax—Interstate Transportation

DISCUSSION

Taxpayer protests the imposition of Gross Income Tax on income derived from work performed as a part of interstate transportation. The Auditor assessed Gross Income Tax on the basis that the income from these contracts was derived from the performance of services performed wholly within Indiana. Taxpayer counters by referencing 45 IAC 1-1-145, which states:

Receipts from Truck Transportation. Receipts from transportation charges or other charges directly related to transporting goods by truck are exempt from gross income tax if such transportation is an initial, intermediate or final step in interstate transportation.

Taxpayer believes that since it is handling and sorting packages for interstate transportation companies, its performance of the contracts qualifies as an intermediate step in interstate commerce.

The Department refers to 45 IAC 1.1-1-121, which states in part:

Income from the Performance of a Contract or Service. Gross income derived from the performance of a contract or service within Indiana is subject to gross income tax. Below is a list of some of the situations which have arisen in dealing with service income, with an indication of the taxability of each:

- (a) Income from a contract for the performance of services within the State is subject to gross income tax. However, if the contract calls for the performance of services both within and without the State by a nonresident with no in-state business situs and the nonresident's performance within the State is minimal or incidental in comparison to his performance out-of-state, no service income will be taxed. In determining what will be considered "minimal" or "incidental," the Department has formulated these guidelines: If five percent (5%) or less of the total hours or total fee under the contract in any tax year is attributable to services performed in Indiana, the entire proceeds of the contract received in that year are exempt from gross income tax. If the five percent (5%) figure is exceeded, the entire proceeds of the contract are taxable. The purpose of the five percent (5%) rule is to avoid taxing the proceeds of contracts involving minimal activities in the State. The Department reserves the right to review any contract to determine if it calls for more than minimal in-state activities, non-withstanding the "five percent (5%) rule" guidelines.

Taxpayer fulfils its contracts with the interstate carriers by unloading, handling and sorting packages as they come into the airport and reloading those packages before they leave the airport. Taxpayer does not truck the packages themselves. The packages never leave the airport while in taxpayer's control.

At hearing, taxpayer explained that the Department had issued assessments for the same issue covering tax year 1993 and that the assessment had been successfully disputed in 1995. Taxpayer stated that since the assessment on the same issue had been resolved in

its favor, and since there had been no change in Indiana tax laws regarding this issue, it would expect the same results in this protest.

Review of the Department's records shows that the disputed assessment was the result of a review of taxpayer's return. No audit was performed. No Letter of Findings was issued. The assessment was simply canceled. While this error results in a benefit for taxpayer for tax year 1993, it does not bar the Department from issuing assessments in following years for the same issue. IC 6-8.1-3-3(b) explains:

No change in the department's interpretation of a listed tax may take effect before the date the change is:

- (1) adopted in a rule under this section; or
- (2) published in the Indiana Register under IC 4-22-7-7(a)(5), if IC 4-22-2 does not require the interpretation to be adopted as a rule;

if the change would increase a taxpayer's liability for a listed tax.

In this case, the Department is not changing its interpretation of a listed tax. There never was an interpretation for the 1993 assessment. The assessment was merely canceled without explanation.

Taxpayer is not engaged in interstate transportation activities, but rather provides local delivery services. Therefore, 45 IAC 1-1-121 applies to taxpayer's situation. Taxpayer's income resulted from contracts for the performance of services wholly within Indiana. 45 IAC 1-1-145 applies to taxpayer's customers—the interstate carriers. The cancellation of the previous assessment does not constitute an interpretation; therefore the Department may issue assessments in this case.

FINDING

Taxpayer's protest is denied.